



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

**MINUTES
of
BOARD MEETING
Held on
July 26, 2012**

Meeting Location: New Bedford Whaling Museum
18 Johnny Cake Hill
New Bedford, MA

Prepared by: T. Wood
[Approved: October 9, 2012]

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on May 15, 2012
3. Draft license application denial letter
4. Application dockets
5. Renewal docket
6. Petition re: Exam Scheduling
7. Memo from Terry Wood to the Board regarding possible regulation amendments
8. "Licensed Site Professionals (LSP) Organization" document and "LSP Staff Responsibilities" document

1. **Call to Order:** Elizabeth Callahan called the meeting to order at 1:50 p.m. The other Board members present were Gail Batchelder, Kirk Franklin, Jack Guswa, Debra Listernick, Robert Luhrs, and Kelley Race. The following LSP Board members were absent: Debra Farnsworth, Christophe Henry, and Farooq Siddique. The LSP Board staff members present were Lynn Read, Beverly Coles-Roby, Al Wyman and Terry Wood. Also present were Cosimo Gallinaro from the LSP Association (LSPA), and Wes Stimpson.
2. **Announcements:** None.
3. **Agenda:** Ms. Callahan stated that Item 13.B. Discussion regarding potential regulatory changes would be moved up to the beginning of the agenda because Linda Benevides from the Executive Office of Energy and Environmental Affairs ("EOEEA") was going to call in to speak to the Board regarding Governor Patrick's regulatory reform effort to assist small business. Also, a new Item 8.C. Petition regarding Exam Scheduling was added to the agenda. As a result, the item previously numbered 8.C. became item 8. D.
4. **Discussion regarding potential regulatory changes:** Ms. Coles-Roby explained that

the Governor's office was undertaking a regulatory reform initiative aimed at assisting businesses in the Commonwealth with 500 or fewer employees. The Governor's office was looking for potential reforms such as streamlining regulations, eliminating duplicative regulations and considering ways to reduce taxes or fees. Ms. Coles-Roby placed a call to Ms. Benevides. The Board members and Board staff introduced themselves to Ms. Benevides who addressed the group via speaker phone. Ms. Benevides explained that Governor Patrick's regulatory reform effort is aimed at reviewing the various state regulations that impact small business and the initial goal of the administration was to look at a total of 1,000 regulations across agencies by the end of fiscal 2012. She stated that MassDEP was part of this initial round.

She stated that the administration is now entering the second round of the effort and is looking to review additional regulations including those of other EOEEA agencies such as the LSP Board. She added that EOEEA is considering complaints they have received from stake holders as well as the impact economic changes may have had on the effect of certain regulations. She stated that she was seeking feedback from the Board regarding potential regulation changes that might assist with this initiative.

Ms. Race asked how the administration defines a small business. Ms. Benevides stated that the administration is considering environmental consulting as the industry group and that a small business within that group was one with 500 or fewer employees and annual revenue under \$14 million. She added that the administration has identified approximately 40 environmental consulting firms that meet these criteria. Ms. Race asked whether this effort was a penalty on larger businesses. Ms. Callahan stated that she believed that the administration's view was that regulatory reforms that help small business would also be beneficial to larger business. Ms. Benevides concurred.

Ms. Wood asked if the administration was looking at any particular aspects of the LSP Board's regulations. Ms. Benevides said no and added that there are not many agencies within EOEEA with regulations that could impact small business. She stated that EOEEA would also be looking at the regulations of the Office of the Massachusetts Environmental Policy Act. She stated that EOEEA wants to hear the Board's ideas regarding this initiative.

Mr. Luhrs stated that the Board could look at its fee regulations. Both Ms. Callahan and Ms. Wood stated that any regulatory changes regarding fees would have to be approved by the Office of Administration and Finance. Ms. Callahan indicated that the Board could, for example, look at ways that processes (such as applying and renewing) could be simplified.

Ms. Race asked Ms. Benevides whether an end goal of the effort was to reduce the amount of LSP Board staff. Ms. Benevides said no, that the effort was aimed at assisting small business. Ms. Benevides thanked the Board for their time and assistance with this project and ended the call.

Ms. Callahan stated that the administration's goal was to assist with stimulating the

economy rather than streamlining the LSP Board's budget. Ms. Coles-Roby stated that she would work with Ms. Wood to collect ideas from Board members and would e-mail them around.

5. **Minutes:** The Board approved the draft minutes of the meeting of the Board held on May 15, 2012 as written.
6. **Decisions Regarding Licensing of Applicants:** The staff presented the following Application Dockets:

Application Docket Number 1:

ID #	Applicant Name/Company Name	ARP #	REC.
2304	Edward G. Kontos, III/Groundwater and Environmental Services, Inc.	243	D

Ms. Listernick was recused and left the room.

A motion was made and seconded to accept the recommendation from Application Review Panel #243, i.e., that the application submitted by Mr. Kontos be denied and that he be found ineligible to take the exam. The motion was approved unanimously.

Ms. Listernick returned to the room.

7. **License Renewal Applications:**

A. Renewal Dockets. The staff presented the following License Renewal Docket:

Renewal Docket #1
Renewal Date: July 30, 2012
New Renewal Date: July 30, 2015
 Has completed all requirements for renewal:

LSP #	First	Middle	Last
1009	Neil		Shifrin
2667	Richard		Carnevale
3188	Joseph	G.	Lombardo, Jr.
3210	Christen		Sardano
4065	Thomas	A.	Chapman
4130	John	A.	Chambers
4276	William	B.	Kerfoot
6176	George	E.	Campbell
6297	Eric		Axelrod

LSP #	First	Middle	Last
7155	Thomas	J.	Fennick
7432	Daniel	W.	Felten
7770	Kurt	E.	Klages
7839	Robert		Smith
8137	Jeffrey	S.	Holden
8641	Stewart	A.	Wiley
8882	Robert	D.	Lucci
9068	David	A.	Melycher
9282	Mark	A.	Welsh

8. Other Licensing-Related Matters:

- A. New Panel Assignments and Scheduling.** The following Board members were assigned to Application Review Panel # 245: Ms. Callahan, Ms. Listernick and Ms. Race.
- B. Appeals Status Report.** Ms. Wood reported that there are no pending appeals regarding the Board's denial of a license application.
- C. Inactive Status Report.** The staff reported that a total of 6 LSPs are currently on Inactive Status.
- D. Total Number of Active LSPs.** The staff reported that the total number of Active LSPs as of the date of this meeting was 543.

9. Examinations:

- A. New Licensees.** The staff reported that the following approved applicants passed the licensing exam and are now LSPs:

	<u>Exam Date</u>
• Kelley J. McQueeney (#1796)	6/6/2012
• Amy E. Walkey (#8513)	6/20/12
• Todd D. Kirton (#2365)	6/20/12
• Neil Schofield (#9020)	6/27/2012
• Eric Henry (#9814)	6/27/2012

The Board members requested that in future the staff also inform the Board regarding how many people took the LSP examination and how many passed during each exam administration.

- B. Dates of Next Exam:** The staff report that the dates for the next administration of the exam have not yet been scheduled.

C. Petition Regarding Exam Scheduling: Ms. Coles-Roby stated that, during the administration of the exam on June 6, 2012, the computers used by two of the exam-takers crashed shortly before the half-way point of the 8-hour test. She stated that, after unsuccessfully attempting with an IT person from MassDEP to get the test reloaded on these two computers, the two people were sent home. The morning session of one of the two crashed exams was recovered but not the other. The person whose morning portion of the exam was recovered came into the LSP Board staff offices later in June to complete the afternoon portion of the exam. The other person also came back into the office later in June to retake the entire exam. Neither person passed the exam.

Ms. Coles-Roby disseminated copies of a letter from the person who had to retake the entire exam. The letter stated that he was requesting that the LSP Board waive the regulatory requirement in 309 CMR 3.04(9) to wait not less than 90 days to re-take the LSP exam, and instead allow him to re-take the LSP exam in late August or early September 2012 which is prior to the next scheduled exam administration (currently anticipated to be scheduled in November or December 2012). The person cited the disruption during the first exam and a need for the LSP license in his current employment as good cause justifying his request.

Ms. Batchelder asked whether the reason the two computers had crashed had been determined. Ms. Coles-Roby stated the reason had not yet been determined.

Mr. Luhrs inquired whether the Board had ever considered any exam-related waivers in the past. Ms. Wood stated that the Board had recently considered and approved a request from a person who had asked for additional time beyond the two years allowed under the regulations after a license application is approved by the Board to pass the exam. She also stated that the Board had recently considered and denied a request from a person to be allowed to take the exam earlier than the next scheduled exam administration.

After discussion of the request, a motion was made and seconded to deny the petition. The motion passed with a vote of five in favor (Ms. Batchelder, Ms. Callahan, Mr. Franklin, Mr. Guswa and Mr. Luhrs) and two abstentions (Ms. Listernick and Ms. Race).

The Board indicated to the staff that a date in early November should be considered to allow this person to take the exam as early as possible during the next anticipated exam administration.

D. Discussion re: reconvening exam subcommittee. The Board members considered the issue of reconvening the exam subcommittee. Mr. Wyman stated that MassDEP is anticipated to issue draft changes to the Massachusetts Contingency Plan (“MCP”) very soon and, therefore, it might make sense to delay working on new versions of exam questions until these regulation changes have been released. Ms. Callahan

agreed that this is a factor that the Board should consider but that the LSPA's technical practices group could continue to work on a new case study for the exam.

Ms. Roby stated that she would serve as chair of the exam subcommittee. The Board members discussed whether or not to reconvene the committee now or after the changes to the MCP are promulgated. Ms. Race asked Mr. Stimpson if he knew how close the LSPA's technical practices group was to completing a case study. He stated he believed they were approximately three to four months away.

After discussion, the consensus of the Board was to reconvene the exam subcommittee now considering the time it takes to prepare and finalize new questions and also considering that the subcommittee could work on technical questions before the regulatory amendments to the MCP are issued. Ms. Roby will chair the subcommittee. Ms. Batchelder, Mr. Guswa and Ms. Listernick expressed interest in serving on the subcommittee. Mr. Stimpson also indicated he would be interested in helping. The Board members also indicated that Ms. Callahan might be helpful as well but planned to ask John Fitzgerald if he would also be willing to participate in light of his involvement with the exam subcommittee in the past.

Mr. Luhrs pointed out that, at a later point in the exam update process, money from the Board's budget will be needed to hire a psychometrician. Ms. Coles-Roby stated that she had copies of the contracts that had been used in the past and could reach out to see if the person the Board had contracted with before might be available.

10. Continuing Education Committee Report:

A. Course and Conference Approval Requests. Mr. Wyman reported that the Committee had met earlier in the day and had the following course recommendations to present to the full Board:

Sponsor: AEHS

Course Title: 28th International Conference on Soils, Sediments, Water and Energy

Credits Requested: 1:2 Conference Technical Credits and 1:1 Conference Workshop Credits

Committee Recommendation: **Approve the conference and associated workshops except for the following two workshops which the Committee recommended be denied:**

- *CHMM/CHMP/HMMT/ Hazardous Materials Management, and*
- *Alberta Tar Sands: A Closer Look at the Development and Mitigation of Environmental Impacts.*

Sponsor: DEP

Course Title: Risk Assessment, Risk Management and the Significance of the Risk

Credits Requested: 2 DEP Regulatory Credits

Committee Recommendation: **Approve.**

Sponsor: LSPA

Course Title: 2D and 3D Environmental Data Visualization

Credits Requested: 4 Non-DEP Technical Credits

Committee Recommendation: **Approve.**

A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.

B. Other Business

Waiver Request from Paul Campagna. Mr. Campagna requested additional time beyond July 31, 2012 to obtain the three additional DEP credits he needs to renew his license before being required to reapply. Mr. Campagna's license lapsed on July 31, 2011 because he did not have sufficient continuing education credits to renew his license. As described in 309 CMR 3.06(4) (a), an LSP whose license has lapsed may renew his or her license any time during the following year by obtaining the required continuing education credits. After a year has passed, an LSP is required to reapply. The Committee recommended that the Board approve the waiver and offer Mr. Campagna an additional six months beyond July 31, 2012 to renew his LSP license without being required to reapply. They also recommended that, if Mr. Campagna did not successfully renew by the end of the six months, he be required to reapply for a license unless he were to file a second waiver request that the Board voted to approve.

A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.

At this point in the meeting, Mr. Guswa asked Mr. Wyman whether he had checked with the staff at the UMass Soils Conference as the Board had requested at the May 2012 meeting to see whether the UMass staff would be amenable to continuing to use the same sign-in and sign-out procedure for LSPs at the upcoming conference in the fall as they had used previously. As discussed at the May meeting, the UMass Soils Conference staff had requested the procedure be altered to be consistent with the sign-in and sign-out procedures required by other programs. Mr. Wyman stated that he had confirmed with UMass staff that they would continue to use the same sign-in and sign-out procedure for LSPs that they had in the past.

11. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the meeting of the Professional Conduct Committee held earlier in the day, the Board agreed to forego a Committee report.
12. **Personnel, Budget, and Fees**

A. Personnel. The staff reported no personnel changes.

B. Budget. Ms. Coles-Roby stated that the LSP Board had been level-funded with a budget of \$385,030 for fiscal year 2013. She indicated that a need for layoffs was not anticipated in the coming fiscal year.

13. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby stated that she had met with MassDEP Commissioner Kimmell, Mr. Kimmell's Chief of Staff and the MassDEP diversity coordinator to discuss ways to identify potential candidates for the open labor slot on the LSP Board. Ms. Batchelder asked why Ms. Roby would have met with Commissioner Kimmell to identify potential candidates to Board positions considering the LSP Board is not under the control of MassDEP.

Ms. Callahan stated that prior memos from the LSP Board staff supporting candidates to the LSP Board had been sent through MassDEP, then to EOEEA, and from EOEEA to the Governor's office. Some Board members stated that they did not believe the selection of candidates to the LSP Board was to be governed by the Commissioner of MassDEP.

Mr. Luhrs stated that he believed the separation that is supposed to exist between the LSP Board and MassDEP in reality no longer exists. He asked Mr. Stimpson if the LSPA shared this concern. Mr. Stimpson stated that the LSPA is also concerned that the Board is now being controlled by MassDEP. He stated that the LSPA is concerned, for example, regarding the influence MassDEP is having regarding staffing for the LSP Board. He added that the LSPA also remains concerned regarding the complaint process and the time needed to complete investigations.

Mr. Luhrs added that in the past there had always been an attempt by the Board Chair and the Board's Executive Director to work with the LSPA and other outside groups such as the Associated Industries of Massachusetts (AIM) to identify potential candidates to the Board and to keep MassDEP out of the selection process.

Ms. Callahan asked Ms. Coles-Roby whether the notice that was recently published in the LSPA newsletter regarding the open labor slot on the Board had generated any interest. Ms. Coles-Roby said it had not.

14. **Other Business**

A. Update from LSP Course Subcommittee. Ms. Batchelder and Ms. Race discussed the possibility of preparing a training course to be presented at the upcoming UMass soils conference in October, provided UMass could still accommodate the course. Ms. Callahan indicated she could assist with this effort as well. Ms. Coles-Roby indicated that Ms. Wood could assist the subcommittee with preparing the course.

B. Discussion regarding potential regulatory changes. Ms. Callahan stated that Ms. Wood had prepared a draft memo regarding minor updates to the regulations. She added that, considering EOEEA was now also seeking ideas for regulatory reform to assist small business, it might make sense for the Board to make additional suggestions for regulatory changes that might assist with that effort.

The Board members discussed some possible suggestions. Mr. Luhrs stated that the Board might consider that LSPs who have been in the profession a longer period of time be required to complete fewer continuing education credits than newer LSPs. Ms. Wood stated that the Board had also discussed the possibility of making it easier for LSPs to take on-line courses by possibly not requiring these courses be pre-approved. She suggested that the Board might consider preparing a policy document that outlined the factors the Board might consider in retroactively approving an on-line course to give LSPs some guidelines. Mr. Wyman stated that the Board had discussed some of these factors at prior meetings and, therefore, could utilize the minutes from those previous discussions.

Ms. Batchelder stated that she would cull out information presented in a recent white paper issued by the Connecticut Licensed Environmental Professional Board regarding the rules of other jurisdictions with programs similar to the Mass LSP program. She stated she would prepare a document that presented this information in an easy-to-read format.

Ms. Callahan suggested that each Board member attempt to come up with a few innovative ideas and forward them to her and Ms. Coles-Roby. She stated that she would work with Ms. Coles-Roby to prepare an e-mail reminding the Board to submit suggestions by a certain deadline. She added that she will also contact the Executive Director of the LSPA regarding getting ideas from the LSPA membership.

- C. “Licensed Site Professionals (LSP) Organization” document/“LSP Staff Responsibilities” document.** Ms. Coles-Roby passed out copies of a document that included an organizational chart and a description of the duties of each member of the LSP Board staff. The organizational chart depicted the relationship of the LSP Board staff to the LSP Board, MassDEP and EOEEA.

The Board members asked who had prepared the organizational chart. Ms. Coles-Roby stated that the chart had been prepared by the human resources department at EOEEA. She also indicated that EOEEA Secretary Sullivan was planning to come to address the Board at an upcoming meeting. Some Board members expressed concerns regarding the details of the organizational chart.

Several Board members stated that they were not in a position to discuss the organizational chart or the position descriptions considering they had not been sent to them prior to the meeting.

Ms. Wood requested that Ms. Coles-Roby and Ms. Callahan clarify to the Board that Ms. Wood will no longer be supervising Mr. Wyman or Ms. Read regarding disciplinary matters and that Ms. Coles-Roby will be reviewing the documents prepared in the course of CRT investigations. Ms. Luhrs asked whether this might cause a problem and make Ms. Coles-Roby unavailable to serve as the Board’s counsel on any disciplinary matters in the future. Ms. Coles-Roby stated that she

would not be serving on any disciplinary cases. She indicated that major assignments would go through her while the staff could undertake minor assignments without her direct involvement. Ms. Race asked why there was a need to alter the way the Board interacts with the staff and why all assignments now needed to go through Ms. Coles-Roby. Ms. Batchelder asked if the Board needs the staff to perform relatively minor tasks whether it was acceptable to ask the staff directly. Ms. Coles-Roby stated this would be fine.

Some Board members expressed that they believed the documents should have been labeled as draft since they had not had an opportunity to comment on them. Ms. Coles-Roby stated that the documents were not drafts. She stated that the organizational chart had been prepared by the human resources department at EOEEA and the information in the position descriptions was based on information provided by the staff members regarding the duties each of them perform. Mr. Luhrs stated that he was surprised to learn Ms. Coles-Roby would not be interested to know if the Board members believed significant areas of the Board's work had not been included in the position descriptions.

Ms. Coles-Roby and Ms. Callahan both indicated that the Board members could send comments regarding the organizational chart and position duties to Ms. Coles-Roby.

D. Topic for the next LSP News. Ms. Coles-Roby indicated that she had been working on an article.

15. Scheduling of Next Meeting: The Board plans to next meet on August 30, 2012 at MassDEP's Central Regional Office in Worcester.

16. Enter Executive Session: After some discussion whether there was sufficient time for the Board to hold an Executive Session, **a motion was made and seconded that the Board enter into Executive Session for the sole purpose of reviewing the draft minutes of the March 27, 2012 Executive Session and the May 15, 2012 Executive Session and thereafter to adjourn and not return to public session. The motion was approved on a 6-0 roll-call vote, with one member abstaining.** Ms. Callahan conducted a roll-call vote. Each member present voted as follows:

Ms. Batchelder	Abstain	Mr. Luhrs	Aye
Ms. Callahan	Aye	Ms. Race	Aye
Mr. Guswa	Aye	Mr. Franklin	Aye
Ms. Listenick	Aye		

At approximately 4:12 p.m., the Board entered into Executive Session.